



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 7, 2003

Ms. Shelby R. Rogers
Chief Operating Officer and General Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487

OR2003-0129

Dear Ms. Rogers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174542.

The State Bar of Texas (the "Bar") received a request for any and all documents regarding several entities and two Bar members. You state that most of the requested information has been released to the requestor. You claim, however, that other responsive information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Article XII, section 12 of the Texas State Bar Rules provides that:

The files, records and proceedings of the Committee [on Minimum Continuing Legal Education], as they relate to the compliance or noncompliance of any member with the requirements of this Article, shall be confidential and shall not be disclosed except upon consent of the member affected or as directed in the course of judicial proceeding by a court of competent jurisdiction.

State Bar Rules, Gov't Code Ann., tit. 2, subtit. G app. A, art. 12, § 12 (Vernon 2002). You state that the documents in Exhibit 4 are records of the Committee on Minimum Continuing Legal Education ("MCLE") that relate to the compliance or noncompliance of two Bar members. You inform this office that neither Bar member has consented to the release of these records and that the Bar has not been directed to release these records in the course of judicial proceedings by a court of competent jurisdiction. Thus, we agree that the

information in Exhibit 4 is made confidential by section 12 of article 12 of the Texas State Bar Rules. *See State Bar v. Edwards*, 646 S.W.2d 543, 544 (Tex.App.--Houston [1st Dist.] 1982, writ ref'd n.r.e.) (power to impose any punishment in bar discipline cases derived from State Bar Rules); *Brown v. Linkenhoger*, 153 S.W.2d 342 (Tex.Civ.App.--El Paso 1941, writ ref'd w.o.m.) (power of Supreme Court to make rules, when exercised, is exercise of legislative power under direct grant by constitution, and such rules when promulgated and established have all effect of statutes). Therefore, we find that you must withhold the information in Exhibit 4 under section 552.101 of the Government Code.

You argue that the credit card number in Exhibit 5 must be withheld under section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, the Bar must withhold the credit card number in Exhibit 5 pursuant to section 552.136 of the Government Code.

Finally, we note that Exhibit 5 contains an e-mail address of a member of the public. Section 552.137 makes certain e-mail addresses confidential. As this office has granted the Bar a previous determination with respect to e-mail addresses excepted from disclosure under section 552.137, the Bar may withhold the e-mail address in Exhibit 5 in accordance with Open Records Letter No. 2002-2107 (2002).

You ask this office to issue a previous determination authorizing the Bar to withhold similar information in similar cases in the future. We decline to issue a previous determination at this time allowing the Bar to withhold the general category of information at issue in this case in the future. *See Open Records Decision No. 673 (2001)*.

To summarize, we conclude that (1) the information in Exhibit 4 must be withheld under section 552.101; (2) the credit card number in Exhibit 5 must be withheld under section 552.136; and (3) the e-mail address in Exhibit 5 may be withheld in accordance with Open Records Letter No. 2002-2107 (2002). The remaining information in Exhibit 5 must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Karen A. Eckerle".

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 174542

Enc: Submitted documents

c: Mr. Andrew Wheat
Research Director
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(w/o enclosures)